

Overstreet, Greg (ATG)

From: Richard Goldsmith [RichardG@awphd.org]
Sent: Wednesday, January 11, 2006 3:25 PM
To: Overstreet, Greg (ATG)
Subject: Comments on Proposed Model Rules for Public Records

Attached please find the comments of the Association of Washington Public Hospital Districts on the Model Rules for Public Records proposed by the Attorney General(11/22/05 1:55 PM, OTS-8492.2).

Thank you for the opportunity to comment.

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Date: January 11, 2006

To: Greg Overstreet, Special Assistant Attorney General for
Government Accountability

From: Dick Goldsmith, Director of Legal Services, Association of
Washington Public Hospital Districts

Subject: Comments on Proposed Model Rules for Public Records (Proposed
Model Rules)

General Comments

The commentary in the Proposed Model Rules will be useful to local agencies and members of the public seeking information from them. However, this information could be presented more clearly and concisely by using the following approaches:

- (1) Dropping the five-digit WAC numbers for commentary and merely labeling commentary as "Commentary."
- (2) Placing the commentary *immediately* following the provision in the Proposed Model Rules to which it applies. For example, place the text in WAC 44-14-02002 [Page 9] right after WAC 44-14-020 (2) or (3) [Page 8]. Please note: Subsection (3) is erroneously numbered as (2).

Using this format also may eliminate redundant commentary. For instance, place WAC 44-14-03006 [Pages 16-17] immediately after WAC 44-14-030(4) [Pages 10-11].

- (3) Writing the Proposed Model Rules in "plain English" so that a lay reader can understand them. As currently written, there is too much "legalese."

Although the Legislature mandated that the Attorney General's Office (AGO) only write Model Rules, it would be useful to local agencies if the AGO also developed a model policy that local agencies could use as a template.

I was pleased to note that discussions of the responsibilities of requestors were scattered throughout the commentary for the Proposed Model Rules. Perhaps the AGO could develop a model policy setting out the rights and responsibilities of *requestors*. After modifying this policy, a local agency could display it alongside its policy for handling public record requests. This may be a simple and effective tool for reducing tensions that often arise between agencies and requestors.

Specific Comments

Some of the commentary appears to be contradictory. For example, WAC 44-14-030 (3) [Page 10] states that "A requestor shall not take agency records from agency offices without the permission of the public records officer." However, WAC 44-14-03004 [Page 14] states "an agency should not allow a requestor to take originals of agency records out of the agency's office." (Perhaps there's a subtle distinction here that I'm missing.)

As noted above, what is currently identified as WAC 44-14-020 (2) [Page 8: "The public records officer...."] should be labeled as WAC 44-14-020(3). I also suggest that second sentence in this paragraph be rewritten so there is parallel structure ["will provide...will create...will ensure...and will prevent..."]. In addition, I find the last clause of the second sentence to be awkward. Perhaps it could be revised to "...and will ensure that the fulfilling of public records requests does not cause excessive interference with essential functions of the (agency)."

Consider revising WAC 44-14-03001 [Page 11] so that the "three-part test" is stated more forcefully. For example, "A public record is a 'writing' that contains information 'relating to the conduct of government or the performance of any governmental or proprietary function' and that is 'prepared, owned, used or retained' by an agency."

WAC 44-14-05004 [Page 27] should be changed to WAC 44-14-04004.

WAC-44-14-04004(6) [page 30] and WAC 44-14-04006(3) [Page 32] could be combined.

I hope these comments are helpful. If you have any questions, please do not hesitate to contact me at richardg@awphd.org or (206) 216-2528.